This Recommended Liability Determination was followed by a Recommended Order and Decision in the 1st Quarter of 2005.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
RICHARD SCHROEDER,	)	
	)	
	)	
Complainant,	)	
	)	**Charge No.: 1992CN2413**
and	)	**EEOC No.: N/A**
	)	**ALS No.: 9582**
UNIVERSITY OF ILLINOIS AT CHICAGO,	)	
	)	
	)	
Respondent.	)	

RECOMMENDED LIABILITY DETERMINATION

On September 4, 1996, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Richard Schroeder. That complaint alleged that Respondent, University of Illinois at Chicago, discriminated against Complainant on the basis of a physical handicap when it demoted him and reduced his pay.

A public hearing was held on the allegations of the complaint on October 1 and 2, 2002, before Administrative Law Judge Nelson E. Perez. Subsequent to that hearing, the parties submitted post-hearing and reply briefs. Before he could prepare a recommendation based upon that hearing, Judge Perez left his position with the Human Rights Commission. The parties then stipulated in writing to allow a judge other than Judge Perez to prepare a recommendation based upon the existing record. The matter is ready for decision.

FINDINGS OF FACT

Facts numbers one through seventeen are facts that were stipulated by the parties or admitted in the answer to the complaint. The remaining facts were determined to have been proven by a preponderance of the evidence at the public hearing in this matter. Assertions

made at the public hearing that are not addressed herein were determined to be unproven or were determined to be immaterial to this decision.

1. Respondent, University of Illinois at Chicago, hired Complainant, Richard Schroeder, in 1980. Complainant was hired as a Driver.

2. According to the written job description for the position, lifting constitutes only 5% of a Driver's duties.

3. Most of a Driver's deliveries involved packages weighing less than thirty pounds. Many Drivers were never required to lift more than twenty-five pounds.

4. Charles Downs, the Automotive Foreman and by Thomas Zajac, the Automotive Sub-Foreman assigned specific duties to the Drivers.

5. On February 5, 1991, Complainant herniated a disk in his lower back. He was placed on workers' compensation leave and referred for physical therapy.

6. On July 8, 1991, at the request of Respondent, Complainant was examined by Dr. Leonard Smith of Rush-Presbyterian-St. Luke's Occupational Health Centers. Dr. Smith concluded that Complainant could return to work with a twenty-five pound weight lifting restriction and avoidance of excessive sitting.

7. On July 17, 1991, Dr. Kari Stefansson, Complainant's neurologist, recommended that complainant "should not sit for a long period of time in an automobile with bad suspension such as a bus. The well being of his back would be well served if he could stretch and walk now and then during the work day."

8. In July of 1991, Complainant met with Human Resource Specialist Amy Colwell and Claims Analyst Margaret White. Colwell and White told Complainant that he would be transferred to a position as a Campus Transportation Operator if he could pass the civil service test for that position. They also told him that if he refused to accept the new position, his workers' compensation benefits would end.

9. Complainant began working as a Campus Transportation Operator on September 8, 1991.

10. Under the relevant union contract, a Campus Transportation Operator was paid approximately $4.73 per hour less than a Driver. That disparity grew to $4.92 per hour as of December of 1992.

11. On September 12, 1991, Dr. Clark Montgomery of Respondent's Health Service concurred with the work restrictions previously recommended by Dr. Stefansson. Dr. Montgomery concluded that Complainant "should not sit for long periods of time in automobile with bad suspension such as a bus." Dr. Montgomery also concluded that Complainant "should stretch and walk" from time to time during the workday.

12. In February of 1993, Complainant was assigned to the east campus trade shuttle route on a full-time basis. That route had previously been a job that was shared by more than one Driver.

13. For over a year, Complainant wrote complaints about his route on his daily trip sheets. Those complaints described in detail the pain Complainant felt as a result of driving the shuttle.

14. September 12, 1994 was Complainant's last day of work. That was the day he went on sick leave because of his claims of mental distress resulting from his job assignment.

15. In June of 1990, George Haidl was transferred from Driver to Campus Transportation Operator because of a medical restriction that he not drive a shuttle bus or truck or lift more than twenty pounds. In January of 1993, the vehicle restriction was lifted. Haidl was returned to the position of Driver in February of 1993 with a twenty-five pound lifting restriction.

16. On October 5, 1994, Complainant applied to the State Universities Retirement System for total disability benefits due to his herniated disk and alleged mental distress. That application was approved. Complainant has not worked since that time.

17. Between September 8, 1991 and December 31, 1994, Complainant received workers' compensation benefits of $252.26 every two weeks, or $3.16 per hour (based upon a forty-hour work week). Those benefit payments were tax-free and were intended to compensate Complainant in part for the pay difference between his pay as a Driver and his pay as a Campus Transportation Operator.

18. Complainant worked approximately 150 hours per year of overtime.

19. In 1991, Respondent employed forty to fifty Drivers.

20. Drivers drove vehicles ranging in size from sedans to tractor-trailer combinations. Individual assignments were made on a daily or weekly basis. The assignments included bus routes, work trucks, trade shuttles, courier runs, and chauffeuring.

21. Because delivery and moving of supplies and equipment was part of their job, Drivers were sometimes required to do lifting.

22. Driver Helpers were available to help Drivers with heavy lifting. Both Drivers and Driver Helpers were directed to get help with objects weighing more than thirty pounds.

23. There was a clause in the union contract that stated that Respondent would not use the Campus Transportation Operator position. No Campus Transportation Operators were to be hired after January 1, 1986. As a result, the University had to obtain union approval to transfer Complainant and Haidl to those positions.

24. The written job description for Drivers requires that they be "capable of climbing, heavy lifting, bending or sitting for periods of time."

25. The written job description for Campus Transportation Operators requires that they be "capable of heavy lifting, bending or sitting for periods of time."

26. The duties performed by Campus Transportation Operators were all duties that were included in the duties of a Driver. When the Campus Transportation Operator positions were unfilled, Drivers performed those duties.

27. Every duty performed by Complainant during his time as a Campus Transportation Operator would otherwise have been performed by a Driver.

28. The east Campus trade shuttle, the job to which Complainant was assigned as of February of 1993, complied with the written restrictions provided by Complainant's doctor and Respondent's doctor.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq*. (hereinafter "the Act").

2. Respondent is an "employer" as defined by section 2-101(B)(1)(c) of the Act and is subject to the provisions of the Act.

3. Through both direct evidence and indirect means, Complainant established a *prima facie* case of discrimination against him on the basis of a physical handicap.

4. Respondent articulated a legitimate, non-discriminatory reason for its actions.

5. Complainant proved by a preponderance of the evidence that Respondent's articulated reason is a pretext for unlawful discrimination.

6. Complainant is not entitled to backpay damages for periods during which he was unable to work.

DISCUSSION

Liability

Respondent, University of Illinois at Chicago, hired Complainant, Richard Schroeder, in 1980. Complainant's title was Driver. Drivers drove vehicles ranging in size from small sedans to tractor-trailer combinations. Individual assignments were made on a daily or weekly basis. The assignments included bus routes, work trucks, trade shuttles, courier runs, and chauffeuring.

On February 5, 1991, Complainant herniated a disk in his lower back. He was placed

on workers' compensation leave and referred for physical therapy. On July 8, 1991, at the request of Respondent, Complainant was examined by Dr. Leonard Smith of Rush-Presbyterian-St. Luke's Occupational Health Centers. Dr. Smith concluded that Complainant could return to work with a twenty-five pound weight lifting restriction and avoidance of excessive sitting.

In July of 1991, Complainant met with Human Resource Specialist Amy Colwell and Claims Analyst Margaret White. Colwell and White told Complainant that he would be transferred to a position as a Campus Transportation Operator if he could pass the civil service test for that position. They also told him that if he refused to accept the new position, his workers' compensation benefits would end. Given that choice, Complainant took and passed the necessary civil service test. He began working as a Campus Transportation Operator on September 8, 1991.

Subsequently, Complainant filed a charge of discrimination against Respondent. That charge alleged that Respondent discriminated against Complainant on the basis of a physical handicap, his herniated disk, when it demoted him.

The method of proving a charge of discrimination is well established. First, Complainant must establish a *prima facie* showing of discrimination against him by Respondent. If he does so, Respondent must articulate a legitimate, non-discriminatory reason for its actions. For Complainant to prevail, he must then prove that Respondent's articulated reason is pretextual. ***Zaderaka v. Human Rights Commission***, 131 Ill. 2d 172, 545 N.E.2d 684 (1989). *See also* ***Texas Dep't of Community Affairs v. Burdine***, 450 U.S. 251 (1981).

To establish a *prima facie* case of handicap discrimination, Complainant has to prove three elements. He has to prove 1) that he is handicapped under the Act, 2) that Respondent took an adverse action against him relating to his handicap, and 3) that his handicap is unrelated to the performance of his job duties. ***Habinka v. Human Rights Commission***, 192

Ill. App. 3d 343, 548 N.E.2d 702 (1st Dist. 1989); ***Kenall Mfg. Co. v. Illinois Human Rights Commission***, 152 Ill. App. 3d 695, 504 N.E.2d 805 (1st Dist. 1987).

Under the Act and the Human Rights Commission's interpretive rules, a handicap can be defined as a determinable physical or mental characteristic which resulted from injury (or other listed causes) and is unrelated to the ability to perform the duties of a particular job. *See* 775 ILCS 5/1-103(I)(1); 56 Ill. Adm. Code, Section 2500.20 (a). Certainly, Complainant's herniated disk is a determinable physical characteristic which resulted from an injury. As a result, to establish his condition as a handicap, Complainant only had to prove that the condition is unrelated to his ability to perform the duties of a Driver. Such proof would establish both the first and third elements of his *prima facie* case.

Moreover, there is no dispute that Complainant was demoted from Driver to Campus Transportation Operator solely because of the restrictions imposed by his physical condition. Therefore, if that condition is a protected handicap under the Act, Complainant has established the second element of his *prima facie* case. In short, the establishment of Complainant's entire *prima facie* case turns on whether Complainant, either with or without accommodation, could perform the essential duties of a Driver. The record is absolutely clear that Complainant could perform those duties.

On July 8, 1991, at the request of Respondent, Complainant was examined by Dr. Leonard Smith of Rush-Presbyterian-St. Luke's Occupational Health Centers. Dr. Smith concluded that Complainant could return to work with a twenty-five pound weight lifting restriction and avoidance of excessive sitting. On July 17, 1991, Dr. Kari Stefansson, Complainant's neurologist, recommended that complainant "should not sit for a long period of time in an automobile with bad suspension such as a bus. The well being of his back would be well served if he could stretch and walk now and then during the work day." On July 28, 1991, Dr. Smith increased Complainant's lifting restriction to 35 pounds. Those were the basic

restrictions that Complainant needed to observe. Respondent had no problem assigning him to duties that met those restrictions.

Complainant returned to work on September 8, 1991. He apparently worked steadily at different assignments until February of 1993, when he was assigned to the east campus trade shuttle route on a full-time basis. That route had previously been a job that was shared by more than one Driver. Complainant remained on that route for the rest of his tenure.

Respondent notes that Drivers could be called upon to drive many different types of vehicle, from small sedans through tractor-trailer combinations. The university strongly argues that the ability to drive *any* of its vehicles was an essential duty of a Driver. That position, though, is untenable. Individual assignments were made on a daily or weekly basis. However, many Drivers were kept in the same vehicle indefinitely. Keeping a Driver in the same vehicle had many advantages, including the fact that it gave each Driver an incentive to keep his vehicle clean and in good running condition.

Assigning Complainant job duties which met his restrictions would appear to be a reasonable accommodation. Complainant sought, and ultimately was granted, such an accommodation. Under the Human Rights Commission's procedural rules, once a handicapped employee has requested an accommodation, it is the respondent's burden to show that that the employee would be unqualified even with accommodation, that the accommodation would be prohibitively expensive, that it would unduly disrupt the conduct of business, or that it would constitute an exception to the rules. 56 Ill. Adm. Code, Section 2500.40(d). Respondent failed to meet that burden. In fact, the university offered no facts to suggest that assigning Complainant to a vehicle that met his restrictions would be at all inconvenient, let alone prohibitively expensive or a disruption to its business.

For a period of several years, Respondent had no apparent problem assigning Complainant tasks which met his written restrictions. As a result, it is hard to see how

Complainant's condition interfered with his ability to perform the essential duties of his job. There is no doubt that Complainant established his *prima facie* case.

In response to Complainant's *prima facie* case, Respondent articulated a legitimate, non-discriminatory reason for its actions. According to Respondent, Complainant was moved to the position of Campus Transportation Operator as an accommodation to his condition. The university presented testimony that Campus Transportation Operators drove lighter vehicles than Drivers and that Complainant therefore could perform the duties of that position.

As support for its position, Respondent noted that Complainant was treated similarly to the way another Driver had been treated in the past. In June of 1990, George Haidl was transferred from Driver to Campus Transportation Operator because of a medical restriction that he not drive a shuttle bus or truck or lift more than twenty pounds. In January of 1993, the vehicle restriction was lifted. Haidl was returned to the position of Driver in February of 1993 with a twenty-five pound lifting restriction.

For Complainant to prevail in this litigation, he had to prove by a preponderance of the evidence that Respondent's articulated reason was pretextual. He easily met that burden.

For starters, it is clear that assignment to another position is not a reasonable accommodation under the Act. ***Hunter and Rock Island Housing Auth.***, ___ Ill. HRC Rep. ___, 91990CN1473, May 3, 1996), slip op. at 7, citing ***Caterpillar, Inc. v. Illinois Human Rights Commission***, 154 Ill. App. 3d 424, 506 N.E.2d 1029 (3d Dist. 1987) and ***Fitzpatrick v. Illinois Human Rights Commission***, 267 Ill. App. 3d 386, 642 N.E.2d 486 (4th Dist. 1994). A policy that forces an employee to transfer to a new position is a violation of the Act. ***Hunter***, Id. Thus, Respondent's position is legally untenable.

Respondent's position is also factually untenable. Although Respondent tries to present the Campus Transportation Operator position as a light duty position for injured drivers, that presentation is demonstrably untrue. In fact, the Campus Transportation Operator apparently

was not supposed to exist at all. There was a clause in the union contract that stated that Respondent would not use the Campus Transportation Operator position. No Campus Transportation Operators were to be hired after January 1, 1986. That is the reason that the University had to obtain union approval to transfer Complainant (and earlier, Haidl) to that position.

Moreover, even if the Campus Transportation Operator position was supposed to exist, the written description for the position belies Respondent's explanation. The written job description for Campus Transportation Operators requires that they be "capable of heavy lifting, bending or sitting for periods of time." That language is remarkably similar to the section in the Driver job description which states that Drivers must be "capable of climbing, heavy lifting, bending or sitting for periods of time."

Although the lifting restriction was discussed often in the public hearing and in the posthearing briefing, it is clear that lifting was not a major issue in Complainant's demotion. Because delivery and moving of supplies and equipment was part of their job, Drivers were sometimes required to do lifting. However, Driver Helpers were available to help Drivers with heavy lifting. Both Drivers and Driver Helpers were directed to get help with objects weighing more than thirty pounds. Driver Helpers also would have been available to help Campus Transportation Operators. There is certainly no indication that the position of Campus Transportation Operator was intended to be less physically taxing than the position of Driver.

Indeed, the only real distinction between the two positions is that Campus Transportation Operators were apparently intended to drive smaller vehicles than some of those driven by Drivers. That tends to support Respondent's position in this case, in that Respondent has argued that Complainant was limited in the type of vehicles he could drive. The problem is that *all* of the vehicles that could have been driven by Campus Transportation Operators could also have been driven by Drivers. In fact, when the Campus Transportation

Operator position was not being used (that is, any time when no Drivers had physical restrictions), Drivers were doing *every* task in the Campus Transportation Operator job description.

Complainant was not performing duties that otherwise would not have been performed. *Every* duty he performed during his time as a Campus Transportation Operator would otherwise have been performed by a Driver. There was absolutely no reason Complainant had to be demoted in order to be able to drive those vehicles. The *only* thing different for Complainant was that, as a Campus Transportation Operator, he was paid approximately $4.73 per hour less than a Driver. In short, Respondent "accommodated" Complainant by cutting his pay. Such a cynical approach violates both the letter and the spirit of the Act.

Respondent's transparently disingenuous argument is unquestionably a pretext for unlawful handicap discrimination. It is strongly recommended that the complaint in this matter be sustained.

Damages

A prevailing complainant is presumptively entitled to reinstatement to a job lost due to unlawful discrimination. In this case, though, reinstatement is not recommended. On October 5, 1994, Complainant applied to the State Universities Retirement System for total disability benefits due to his herniated disk and alleged mental distress. That application was approved. Complainant has not worked since that time. It would be inappropriate to try to reinstate Complainant to a job he can no longer perform.

Complainant's application for total disability benefits also provides a cut-off point for his backpay damages. Backpay liability ends when a complainant would no longer have been able to perform the duties of the job. ***Pachowicz and Aero Testing and Balancing Systems, Inc.***, 39 Ill. HRC Rep. 147 (1988), *aff'd sub nom* ***Aero Testing and Balancing Systems, Inc. v. Illinois Human Rights Commission***, 185 Ill. App. 3d 956, 541 N.E.2d 1229 (1st Dist. 1989).

Complainant argues that there should be no cut-off of backpay damages. In his eyes, his total disability was brought about by Respondent's refusal to accommodate him properly. He claims that a proper accommodation would have spared his back by providing proper support while driving and by providing greater opportunities for breaks to allow him to stretch during the workday. Moreover, he maintains that a proper accommodation would have prevented the mental stress that contributed to his disability.

The simple answer to Complainant's argument is that he did not prove that Respondent failed to provide a proper accommodation. The east campus trade shuttle route is the assignment that he had for the last year and a half of his tenure with Respondent. Despite Complainant's assertions to the contrary, his assignment did meet the written restrictions provided by his doctor. Those restrictions might have been rather vague (the parties disagree strongly about what constitutes a "bad suspension"), but they were never clarified and Respondent did not violate the Human Rights Act by complying with the literal language of the written restrictions. Thus, once Complainant was unable to perform the duties of his job, even with an accommodation, backpay liability ceased.

In sum, Complainant is entitled to an award of backpay for the period from September of 1991 (when he was moved to the position of Campus Transportation Operator) through September of 1994 (when he was no longer able to perform his job). The parties appear to have agreed on what Complainant would have earned during that period of time, since they use the same initial totals in their posthearing briefs. They disagree, however, on how to handle the workers compensation payments that Complainant received during that period.

Between September 8, 1991 and December 31, 1994, Complainant received workers' compensation benefits of $252.26 every two weeks, or $3.16 per hour (based upon a forty-hour work week). Those benefit payments were tax-free and were intended to compensate Complainant in part for the pay difference between his pay as a Driver and his pay as a

Campus Transportation Operator. Complainant did not deduct those payments from his backpay calculations. Respondent not only deducted those payments, it increased the deductions by one-third in an attempt to compensate for the fact that the workers' compensation benefits were not taxed. Neither approach is recommended in this case.

Clearly, the compensation payments have to be deducted from the backpay award. The point of such an award is to place the complainant in the position he would have been in if he had not been the victim of discrimination. Failing to deduct the compensation payments would result in a windfall for him.

On the other hand, Respondent's suggestion runs the risk of short-changing Complainant on his backpay award. Respondent concedes on page 10 of its response brief that its calculation of the proper award was done "assuming a 33% tax rate." There is no evidence to establish that such an assumption is warranted. It is impossible to tell from the existing record what the appropriate tax treatment should be, so any assumed tax rate would be nothing more than a guess.

In this case, it is recommended that no allowance be made for the tax implications of the workers' compensation payments. Complainant will be liable for current taxes on any backpay award he receives from this case. Commission awards do not make any allowances for such tax ramifications even though such ramifications affect the amounts that complainants actually receive. In light of the uncertainty of the appropriate amount of tax liability on the workers' compensation payments, it seems unfair to give Respondent an additional setoff. After all, as a general rule, ambiguities in backpay calculations are resolved against the discriminating employer because it was the employer's wrongful act which gave rise to the ambiguities. ***Clark v. Human Rights Commission***, 141 Ill. App. 3d 178, 490 N.E.2d 29 (1st Dist. 1986).

Using the parties' aggregate numbers and the workers' compensation payments, it is possible to calculate the appropriate backpay award. According to the parties' figures,

Complainant would have earned $12,096.00 during the period from September of 1991 through the end of 1992. During that time, he received 65 weeks' worth of workers' compensation payments (at $126.13 per week), totaling $8,198.45. Therefore, Complainant's backpay amount for that period should be $3,897.55.

For the period from January of 1993 through September of 1994, Complainant would have earned an additional $17,055.00. Subtracting 91 weeks of workers' compensation payments which total $11,477.83 leaves a backpay amount of $5,577.17.

In addition, Complainant is entitled to compensation for approximately 150 hours per year of overtime. He calculates that he lost $1,845.00 in overtime. Adding that amount to the other backpay figures results in a total of $11,319.72.

Respondent's arguments about Complainant's alleged failure to mitigate his damages can be disregarded. It is clear that Complainant mitigated his damages by retaining his position as Campus Transportation Operator until he became totally unable to perform the duties of that job.

Thus, for the period from September of 1991 through the end of September of 1994, Complainant's total backpay award should be $11,319.72. As noted above, Complainant was unable to work as of the beginning of October, 1994. Thus, there is no need to extend the backpay calculations.

During the period from September of 1991 through September of 1994, Complainant would have received an additional pension contribution in the amount of 8% of the difference between his pay as a Driver and his pay as a Campus Transportation Operator. He should be awarded that amount, $2,361.00.

At the time he had to apply for disability, Complainant had amassed 340 hours of annual and personal leave. At the Driver rate of pay, that leave was worth $6,147.20. Complainant should be awarded that amount.

Despite his arguments to the contrary, Complainant should not be awarded compensation for his lost sick leave. It appears that the value of that time was paid out to him at the time when he had to apply for disability benefits. Since, as discussed above, that disability was not due to Respondent's actions, Complainant should not be reimbursed for that sick leave.

Complainant also argues that he should be awarded reimbursement for medical expenses and compensated for emotional distress damages based upon Respondent's failure to accommodate his handicap by assigning him appropriate duties. As discussed earlier, Respondent assigned Complainant to duties which met his written work restrictions. Respondent did not fail to accommodate Complainant's condition when it assigned him to particular tasks or vehicles. Therefore, compensation for medical expenses and emotional distress is not recommended.

Because of the delay in his receipt of the money due him, it is necessary to pay Complainant prejudgment interest in order to make him whole. Therefore, it is recommended that he receive such interest.

Respondent should be required to clear its personnel files of all references to this case or to the underlying charge of discrimination. In addition, Respondent should be ordered to cease and desist from further unlawful discrimination on the basis of physical handicap.

Finally, Respondent should be required to pay the reasonable attorney's fees which Complainant incurred in his prosecution of this case. The amount of those fees will be determined after review of a detailed motion for fees and any response to that motion that may be filed.

RECOMMENDATION

Based upon the foregoing, Complainant proved that Respondent discriminated against him on the basis of a physical handicap when it demoted him and cut his pay. He further

proved, by a preponderance of the evidence, that Respondent's articulated reason for its actions was a pretext for unlawful discrimination. Accordingly, it is recommended that the complaint in this matter be sustained and that an order be entered awarding Complainant the following relief:

A. That Respondent pay to Complainant the sum of $11,319.72 for lost backpay;

B. That Respondent pay to Complainant the sum of $2,361.00 for lost pension contributions;

C. That Respondent pay to Complainant the sum of $6,147.20 for lost annual and personal leave;

D. That Respondent pay prejudgment interest on the above amounts, such interest to be calculated as set forth in 56 Ill. Adm. Code, section 5300.1145;

E. That Respondent clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;

F. That Respondent cease and desist from further unlawful discrimination on the basis of physical handicap;

G. That Respondent pay to Complainant the reasonable attorney's fees and costs incurred herein, that amount to be determined after review of a motion and detailed affidavit meeting the standards set forth in ***Clark and Champaign National Bank***, 4 Ill. HRC Rep. 193 (1982), said motion and affidavit to be filed by Complainant within 21 days after the service of this Recommended Liability Determination; failure to submit such a motion will be seen as a waiver of attorney's fees;

H. If Respondent contests the amount of requested attorney's fees, it must file a written response to Complainant's motion within 21 days of the service of said motion; failure so to do will be taken as evidence that Respondent does not contest the amount of such fees;

I. The recommended relief in paragraphs A through F is stayed pending issuance

of a Recommended Order and Decision with the issue of attorney's fees resolved.

HUMAN RIGHTS COMMISSION

BY:_____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: August 5, 2004